

Appellant: Sophie Martinez & V. Alvarez
303 A Telesfor SW
Albuquerque, NM 87105

Agent: Frances Chavez
303 Telesfor SW
Albuquerque, NM 87105

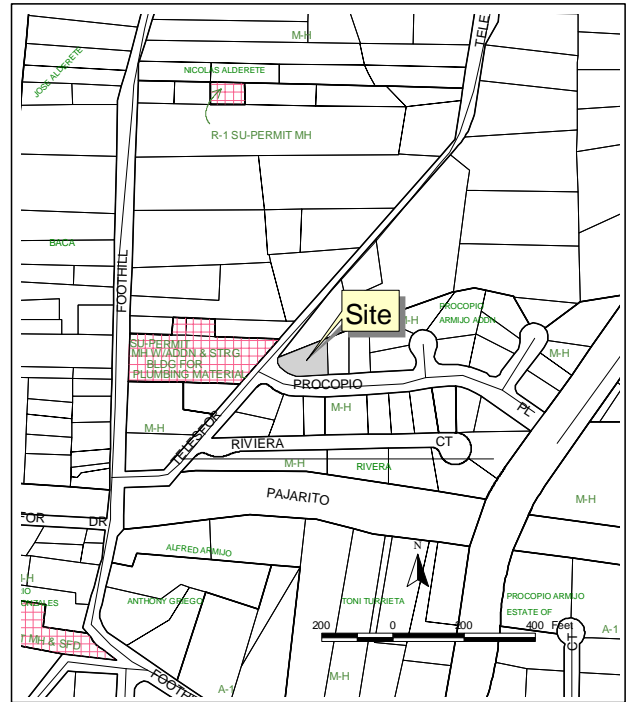
Applicant: Sophie Martinez & V. Alvarez
303 A Telesfor SW
Albuquerque, NM 87105

Agent: Frances Chavez
303 Telesfor SW
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Site Location: 303 Telesfor Dr. SW

Zone Designation: M-H Mobile Home & Single-Family Residential Zone

Recommendation: Denial



Summary: This request is an appeal of the Zoning Administrator's denial of a variance of 5 feet to the required rear yard setback distance for the continued placement of a mobile home. This matter was originally presented to the Board of Adjustment at the October 2004 hearing in combination with an appeal for conditional use approval to allow the mobile home to be used for a medical hardship (BA-40039/ZA-30092). The conditional use request was approved by the Board, and at the request of the appellant, the variance was continued for 12 months in order to allow for the proper relocation of the mobile home on the site.

At the request of the appellant, this matter was deferred by the Board of Adjustment from the October 5, 2005, public hearing to allow for additional time to relocate the mobile home. Although a site visit has not been conducted prior to the publication deadline, staff is confident that additional information will be made available prior to the scheduled hearing.

Staff Contact: Brennon Williams. Zoning Administrator

- Attachments:**
1. Board of Adjustment Notice of Decision for BA-40040/ZA-40100 (October 7, 2005)
 2. Board of Adjustment Notice of Decision for BA-40040/ZA-40100 (October 8, 2004)
 3. Previous staff report with attachments (BA-40039/ZA-30092 & BA-40040/ZA-40100)
 4. Board of Adjustment Notice of Decision for BA-40039/ZA-30092 (October 8, 2004)
 5. Site photos (September 8, 2005)

BA-40040/ZA-40100

Frances Chavez, agent for Sophie Martinez & V. Alvarez, appeals the Zoning Administrator's decision in denying a variance of 5 feet to the required rear yard setback distance on Lot 1, Procopio Armijo Addition, located at 303 Telesfor Dr. SW, zoned M-H, containing approximately .231 acres. (M-11) (Original request submitted by Frances Chavez, agent for Sophie Martinez & V. Alvarez) (DEFERRED FROM THE OCTOBER 5, 2005, HEARING)

BACKGROUND

The Request

The appellant is requesting a variance of 5 feet to the rear yard setback distance to allow for a mobile home in the rear yard of the property. The unit is currently only ten feet from the rear property line, while a minimum setback distance of 15 feet is required. This matter was heard in October 2004 in combination with an appeal for a medical hardship (BA-40039/ZA-30092) and deferred by the Board of Adjustment for 12 months in order to allow the appellant an opportunity to relocate the mobile home to meet applicable setback requirements.

The Property

The site is located at 303 Telesfor Dr. SW, zoned M-H, and is approximately 10,100 square feet in area. The property is currently developed with a single-family dwelling unit, the subject mobile home, and an accessory structure.

The Hearing

The original proposal to allow the existing mobile home to be used in connection with a medical hardship (BA-40039/ZA-30092) was first heard in August 2003 by the Zoning Administrator. Numerous deficiencies were noted with the application, including lack of a detailed site plan, as well as setback and separation problems for existing structures. The request was deferred several times to allow the applicant an opportunity to meet with staff members and to make additional applications. However, due to the lack of additional applications and the applicant's failure to appear at the scheduled hearing, the medical hardship request was denied in March 2004.

That matter was appealed to the Board of Adjustment, and subsequently remanded back to the Zoning Administrator to allow for the complete presentation of the request, as well as additional applications concerning existing development on the site. All matters (the conditional use for the medical hardship and setback variance) were heard at the July 2004 hearing.

The Decisions

The Zoning Administrator denied ZA-30092 based on findings that the site did not meet minimum development standards and that the use of the mobile home served primarily as a second dwelling on the lot, rather than a temporary residential unit related to the medical hardship. ZA-40100 was denied based on findings that the property did not possess any peculiar, exceptional or unusual circumstances to warrant the granting of a variance, nor did any of the arguments raised by the agent meet the criteria necessary for approval.

APPLICABLE REGULATIONS

Comprehensive Zoning Ordinance of Bernalillo County.

Section 11. M-H Mobile Home & Single-Family Residential Zone.

- A. The regulations set forth in this section or set forth elsewhere in this ordinance, when referred to in this section, are the regulations in the M-H Mobile Home and Single-Family Residential Zone. The purpose of this zone is to provide for development of subdivisions or groups of contiguous parcels of land having a

minimum total area of five acres or more, with a mixture of mobile homes and single-family residences on individual lots.

B. Use Regulations. A building or premises shall be used only for the following purposes:

1. Permissive Uses:

- a. Any Permissive Use permitted in the R-1 Residential Zone.
- b. One mobile home having a length of 40 feet or more per lot provided no other residence is located on the same lot.

2. Conditional Uses. The following uses may be permitted if approved by the Zoning Administrator in accordance with the procedures and under the conditions set out in the Administrative Section of this ordinance with additional requirements deemed necessary to safeguard the best interest of the adjoining property, neighborhood and the community.

- a. Any Conditional Use permitted in the R-1 Residential Zone.
- b. One mobile home for a three-year period in addition to an existing single-family dwelling or mobile home on a lot, provided it complies with the following requirements:
 - (1) The mobile home may be used only by members of the immediate family for the purpose of providing assistance to those members of the family who are elderly, ill, or mentally or physically disabled as attested by a licensed physician.
 - (2) The mobile home shall be connected to water and sewage disposal facilities approved by the Department of Environmental Health.
 - (3) The mobile home must be placed on the property in conformance with the setback requirements and located at least 15 feet from any structures on the same or on adjoining property.
 - (4) Placement of a mobile home on the property will not seriously conflict with the character of the area or be detrimental to the values of surrounding properties.

C. Height Regulations. Buildings and structures shall not exceed 26 feet or 2 1/2 stories in height, except as provided in The Supplementary Height and Area Regulation Section of this ordinance.

D. Area Regulations:

1. Minimum Lot Area and Lot Width. Every lot shall have a minimum area of not less than three-quarters [of an] acre and a minimum lot width of 60 feet, except that where community water and sewer facilities are available, the lot area may be decreased to 8,000 square feet if located in the Developing, Established or Central Urban Areas, or 14,520 square feet if located in the Semi-Urban Area of the Albuquerque/Bernalillo County Comprehensive Plan.
 2. Front Yard:
 - a. There shall be a front yard having a depth of not less than 20 feet, except as provided in the Supplementary Height and Area Regulation Section of this ordinance.
 - b. Where lots have double frontage, the required front yard shall be provided on both streets.
 3. Side Yard:
 - a. Except as hereinafter provided in the following paragraph and in the Supplementary Height and Area Regulation Section of this ordinance, there shall be a side yard on both sides of a building the aggregate width of which shall be not less than 14 feet; provided, however, that neither such yard shall be less than six feet in width.
 - b. Wherever a lot of record, at the effective date of this ordinance, has a width of less than 60 feet, each side yard may be reduced to a width of not less than ten percent of the width of the lot, but in no instance shall it be less than three feet.
 - c. On any lot occupied by a mobile home there shall be a side yard on each side of the mobile home of 15 feet in width, and in no instance shall a mobile home be located nearer than 15 feet to an accessory building.
 4. Rear Yard. Except as hereinafter provided in the Supplementary Height and Area Regulation Section of this ordinance, there shall be a rear yard having a depth of not less than 15 feet.
- E. Parking Requirements. Off-street parking for all uses must be provided in accordance with the regulations set forth in the Off-street Parking, Loading and Unloading Regulations Section of this ordinance.

Section 24.A.2. Administration. Zoning Administrator: Powers and Duties.

h. Investigation of Applications:

- (1) Investigate all applications for variances from the height, area, parking or density regulations of this ordinance, and to grant such applications to the extent necessary to permit the owner reasonable use of his land in those specified instances where there are peculiar, exceptional, and unusual circumstances in connection with a specific parcel of land, which circumstances are not generally found within the locality or neighborhood concerned.
- (2) Investigate all applications for an extension of the time limitations authorized by the Nonconforming Use Regulations Section of this ordinance or for an expansion of up to 25% of the original floor area for residential uses in residential zones, and to grant such applications if the use does not seriously conflict with the character of the surrounding area; and in case of expansion of the use, the site is adequate in size and shape to accommodate such expansion and the expansion does not increase the number of dwelling units on the lot or in any structure.

Agency Comments

Comments originally received for both requests from the Bernalillo County Environmental Health Department indicated that proof of connection for water and sewer services for the mobile home were needed. In fact, this requirement was specifically addressed as a condition of approval for the medical hardship request (BA-40039/ZA-30092), however, County records continue to lack this necessary information. The Bernalillo County Public Works Division requests that the property continue to utilize the existing access.

ADDITIONAL INFORMATION

Board of Adjustment hearing – October 2004

Both this matter (BA-40040/ZA-40100) and the conditional use request (BA-40039/ZA-30092) were heard at the Board of Adjustment hearing on October 6, 2004. These matters were presented by the agent, Francis Chavez and her husband, Efren Chavez. The Board granted the conditional use request (BA-40039/ZA-30092), based on eight (8) Findings and nine (9) Conditions, to allow Ms. Chavez to continue to provide care for her mother, Vicky Alvarez Madrid.

Similarly, the Board continued the variance request (BA-40040/ZA-40100) to allow the continued placement of the mobile home with a couple of expectations. First, Ms. Chavez indicated that an accessory building located within the required ten (10) foot separation distance would be removed from the property. The removal of this shed would essentially modify the existing development on the property to match the site plan presented with the request. Secondly, Mr. Chavez testified that the additional time would allow a further opportunity to move the mobile home the necessary distance to meet the setback requirement.

Board of Adjustment hearing – October 2005

At the request of the appellant, this matter was deferred by the Board of Adjustment from the October 5, 2005, public hearing. The appellant, Mr. Chavez, indicated that due to scheduling conflicts with the individual who had been hired to relocate the unit, the existing mobile home had not been moved. However, he did present photographs showing that preliminary work had been conducted on the site, and stated that the deferral should allow enough additional time to complete the process.

CONCLUSION

As of the December publication deadline, staff was unaware of any additional steps taken to relocate the mobile home, but a recent site visit had not yet been conducted. Staff is confident that a site tour will be completed prior to the scheduled hearing on December 7, 2005, and a full report will be made to the Board on the steps taken.

A site visit of the property on September 8, 2005, revealed no change to the development as was indicated as being necessary at the Board of Adjustment hearing a year ago. Both the noted accessory building and the mobile home appear to remain in their previously noted positions on the site. Additionally, in speaking with the Zoning Enforcement staff, the County was unaware of any planned work to make the necessary changes.

Further complicating this matter, there is no record of compliance with the Conditions of Approval established with the related medical hardship request (BA-40039/ZA-30092). The site still lacks proof of connection for the mobile home to water and sewer services, and the continued location of the accessory building violates Condition #9 (Attachment 3).

Section 24.B. of the Zoning Ordinance authorizes the Board of Adjustment to hear and determine appeals from the decisions of the Zoning Administrator in denying applications for variance requests. Combined with the previous time extension afforded by the Board, as well as multiple deferrals at the Zoning Administration level, staff maintains that justification falls short of the standards necessary for approval of the request.

RECOMMENDATION

Denial of BA-40040-ZA-40100, thereby upholding the previous decision of the Zoning Administrator.

Brennon Williams
Zoning Administrator